

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6724 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PURSHOTTAMDAS MOHANLAL SHAH

Appearance:

MR SM MAZAGAONKAR for Petitioner

MR SR BRAMBHATT for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/97

ORAL JUDGEMENT

1. The challenge has been made by G.S.R.T.C by this
Special Civil Application to the order dated 28th
February, 1984 of 6th Labour Court, Ahmedabad, in
Recovery Application No. 4092 of 1977 under which it has
been decided that the respondent workman is entitled to

wages of a Clerk from 19.7.1965 to 25th March 1968.

2. The learned counsel for the petitioner contended that the application filed by the respondent workman under Section 33-C(2) of the I.D. Act, 1947 (hereinafter referred to as the "Act") was not maintainable. The claim made by the respondent workman in the application under Section 33-C(2) of the Act was not a claim which has already been adjudicated or accepted by the Corporation, and as such, the respondent workman should not have filed such an application and the Labour Court has no jurisdiction to compute the monetary benefits. Lastly, the learned counsel for the petitioner contended that the Application has been filed by the respondent workman in the year 1977 for the claim pertains to the period from 19th July, 1965 to 25th March 1968 and though the limitation is not prescribed for filing of such application, but such application has to be filed within a reasonable time and the delay of more than 12 years is not said to be reasonable and just. On the other hand, the learned counsel for the respondent workman contended that the Labour Court has after holding the enquiry, adjudicated the claim of the respondent workman, and as such the contention made for lack of jurisdiction of the Labour Court in the matter is wholly untenable. It has next been contended that the workman has worked as Clerk and as such the Labour Court has rightly made him entitled for the salary of the Clerk for the period in dispute.

3. Replying to the last contention of the learned counsel for the petitioner, the learned counsel for the respondent contended that this plea was not raised by the petitioner before the Labour Court and as such in the writ petition under Article 227 of the Constitution, the Corporation cannot be permitted to raise new plea.

4. I have given my thoughtful consideration to the submission made by the learned counsel for the parties.

5. The claim of the respondent - workman for the salary of the post of Clerk has not been accepted by the Corporation. It is also not in dispute that such a claim has not been adjudicated by the competent authority earlier in point of time. The respondent workman was appointed on the post of Storeman on 19th July, 1965 in the Grade of Rs.70 - 120. The respondent workman has been promoted to the post of Clerk on 26th March, 1968 and on this fact also there is no dispute. The learned counsel for the petitioner contended that the claim of the respondent workman that he worked as Clerk from the

date of his initial appointment is a disputed question and unless thereon an adjudication is made, the question of the computation of benefits under Section 33-C(2) of the Act, 1947 does not arise. If in such matter, the workman is allowed to resort to the provisions of the Section 33-C(2) of the Act, 1947 then the other disputes pertain to termination, dismissal and removal from services which are not amenable to the jurisdiction of the Labour court under Section 33-C(2) of the Act, will become amenable to its jurisdiction. The entertainment of application under Section 33C(2) of the Act in such case is nothing but only usurping the jurisdiction by the Labour Court in an individual dispute. The proceedings under Section 33-C(2) of the Act 1947 are in the nature of an execution proceedings. The matter is no more res integra for such claim the remedy under Section 33-C(2) of the Act, 1947 is not available to the workman. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of M.C. DELHI v. GANESH RAJAK, reported in JT 1994 (7) SC 47.

In view of the above fact, this petition deserves to be accepted only on the first contention raised by the learned Counsel for the petitioner. The other contention raised by the learned counsel for the parties are not required to be gone into. In the result, this Special Civil Application is allowed and the order of the Sixth Labour Court dated 28.2.1984 in Recovery Application No. 4092 of 1977 is quashed and set aside. The rule is made absolute. No costs.

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